

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRESENIUS MEDICAL CARE
HOLDINGS, INC., et al.,

No. C 03-1431 SBA

Plaintiffs,

ORDER

v.

[Docket No. 436, 441, 446, 448, 473, 477,
487, 493, 498, 579]

BAXTER INTERNATIONAL, INC., et al.,

Defendants.

On February 21, 2006, Plaintiffs Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc. (collectively, "Plaintiffs" or "Fresenius") filed a Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,247,434 and 6,284,131 [Docket No. 436].

On March 6, 2006, Fresenius filed a Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441].

On March 7, 2006, Defendants Baxter International, Inc. and Baxter Healthcare Corporation (collectively, "Defendants" or "Baxter") filed a Motion for Partial Summary Judgment of Validity [Docket No. 448], a Motion to Bar Fresenius' Proffered Damages Expert Professor Rubinfeld [Docket No. 446], a Motion to Strike Fresenius' Best Mode and Anticipation Defenses [Docket No. 473], and a Motion to Bar the Expert Testimony of Jeff Riley [Docket No. 477].

1 On March 21, 2006, Baxter filed oppositions to Fresenius' summary judgment motions, as well
2 as three motions to strike (the "March 21, 2006 Motions to Strike") [Docket Nos. 487, 493, 498]. The
3 March 21, 2006 Motions to Strike seek to strike: (1) the PTO documents submitted by Fresenius in
4 connection with its summary judgment motion relating to the '434 and '131 patents [Docket No. 493],
5 (2) the declaration of Charles Ragsdale in support of Fresenius' summary judgment motion relating to
6 the '027 and '476 patents [Docket No. 487], and (3) exhibits 1 and 13 attached to Thomas S.
7 McClanahan's declaration in support of Fresenius' summary judgment motion relating to the '027 and
8 '476 patents [Docket No. 498].

9 On March 22, 2006, Baxter filed the instant Administrative Motion for Order Shortening Time
10 [Docket No. 579]. In its Administrative Motion, Baxter requests that the Court set the March 21, 2006
11 Motions to Strike for an April 11, 2006 hearing, to coincide with the hearing on the motions for
12 summary judgment currently pending before the Court. On March 27, 2006, Fresenius filed its
13 opposition to the Administrative Motion. In its opposition, Fresenius argues that the March 21, 2006
14 Motions to Strike are untimely, were filed in violation of the Civil Local Rules, and have placed a great
15 burden on Fresenius. Fresenius requests that the Court decline to consider the March 21, 2006 Motions
16 to Strike. In the alternative, Fresenius asks that the Court allow Fresenius to file its oppositions to the
17 March 21, 2006 Motions to Strike on April 4, 2006.

18 The Court agrees with Fresenius that the timing of Baxter's March 21, 2006 Motions to Strike
19 is questionable and in technical violation of the Civil Local Rules. While the Court is sensitive to the
20 fact that Baxter likely needed some time to evaluate the numerous motions and evidentiary submissions
21 filed in this matter, the Court is very troubled by the fact that Baxter has not provided *any* explanation
22 as to why it waited as late as March 21, 2006 to file these motions. Indeed, by waiting until March 21,
23 2006 to file three additional motions, Baxter has not only unfairly disadvantaged Fresenius, but has
24 created a considerable strain on the Court's scant judicial resources as well. Further, the Court does not
25 appreciate Baxter's apparent disregard for the Court's meet-and-confer requirement or the Court's need
26 to manage its docket efficiently.

27 However, because the summary judgment motions pending before the Court are case dispositive,
28 and because the Court must take great care to ensure that all of evidence relating to the motions is

admissible, the Court finds that the interests of justice would not be furthered by simply declining to consider the March 21, 2006 Motions to Strike. Additionally, as Fresenius concedes in its opposition to the Administrative Motion, the motions to strike are not complex. As such, the Court finds that the parties should be able to provide briefing to the Court on these motions on an expedited basis. However, since the Court also finds that the interests of judicial economy favor a combined hearing on all of the pending motions, and since Baxter's belated filings and the parties' piecemeal approach to briefing this matter have deprived the Court of the time it needs to effectively consider the numerous motions and voluminous evidentiary submissions prior to the April 11, 2006 hearing, the Court finds that a continuance of the April 11, 2006 hearing is necessary.

Accordingly,

IT IS HEREBY ORDERED THAT the April 11, 2006 hearing on Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,247,434 and 6,284,131 [Docket No. 436], Fresenius' Motion for Summary Judgment of Invalidity of the Asserted Claims of U.S. Patent Nos. 5,326,476 and 5,744,027 [Docket No. 441], Baxter's Motion for Partial Summary Judgment of Validity [Docket No. 448], Baxter's Motion to Bar Fresenius' Proffered Damages Expert Professor Rubinfeld [Docket No. 446], Baxter's Motion to Strike Fresenius' Best Mode and Anticipation Defenses [Docket No. 473], and Baxter's Motion to Bar the Expert Testimony of Jeff Riley [Docket No. 477] is CONTINUED to **May 9, 2006 at 1:00 p.m.** The Court may, in its discretion, adjudicate the motions without a hearing, in which case the Clerk will notify the parties that no appearance is necessary.

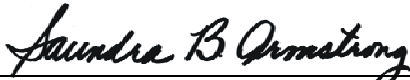
IT IS FURTHER ORDERED THAT Baxter's Administrative Motion [Docket No. 579] is GRANTED IN PART. The Motions to Strike filed on March 21, 2006 [Docket Nos. 487, 493, 498] shall be heard on **May 9, 2006 at 1:00 p.m.** The Court may also, in its discretion, adjudicate these motions without a hearing, in which case the Clerk will notify the parties that no appearance is necessary.

IT IS FURTHER ORDERED THAT Fresenius shall file its oppositions, if any, to the March 21, 2006 Motions to Strike [Docket Nos. 487, 493, 498] **no later than April 4, 2006.** Baxter may file its reply briefs, if any, **no later than April 7, 2006.** The parties **MAY NOT** alter the briefing schedule set

1 forth herein without first seeking leave of Court. **The Court hereby reminds the parties that they are**
2 **obligated to engage in a *meaningful* meet and confer *before* filing any motions with the Court.**

3 IT IS SO ORDERED.

4
5 Dated: 3/28/06


6 SAUNDRA BROWN ARMSTRONG
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28